



**BOARD OF ZONING APPEALS**  
**City of Hampton, Virginia**

**CHAIRMAN:** Thomas J. (Tom) Savage, Jr.

**VICE-CHAIRMAN:** Burnett (Burnie) Peters

**BOARD MEMBERS:** John C. (Jack) Pope; Rodney Gentry;  
Linda Ellis; Tim Smith, Alternate

**MEETING AGENDA**  
**October 7, 2013, 5:00 PM**  
**Hardy Cash Conference Room**

- I. Roll Call
- II. Minutes of the September 16, 2013 Meeting
- III. Public Hearing Items
  - A. **VA13-00022: Wendy's International, Inc., 5113 West Mercury Boulevard, LRSN 3002550,**  
a variance to increase the total number of allowable drive-through menu board signs from 1 to 2 and to increase the maximum overall height of a drive-through menu board sign from 6' to 6.25' to allow a second menu board sign at an existing restaurant
- IV. Additional Items
- V. Adjournment

CITY OF HAMPTON  
COMMUNITY DEVELOPMENT DEPARTMENT  
22 LINCOLN STREET  
HAMPTON, VA 23669  
757-728-2444

As a courtesy to others during the meeting, please turn off cellular telephones or set them to vibrate.

AT A REGULAR MEETING AND PUBLIC HEARING OF THE BOARD OF ZONING APPEALS OF THE CITY OF HAMPTON, VIRGINIA, HELD IN THE HARDY CASH CONFERENCE ROOM, CITY HALL, 22 LINCOLN STREET, AT 5:00 P.M. ON MONDAY, **September 16, 2013.**

**Present:** Chairman Thomas Savage, Vice-Chairman Burnett Peters, Board Members Linda Ellis, John Pope, and Rodney Gentry. Also present were Sr. Zoning Official Jeff Conkle, Senior Deputy City Attorney Lesa Yeatts, and Recording Secretary Angela Leflett.

Chairman Savage called the meeting to order and asked that the minutes of the August 19, 2013, meeting be considered. A motion was made by Board Member Gentry and seconded by Vice-Chairman Peters that the minutes be approved as written.

A roll call vote on the motion resulted as follows:

AYES:	Ellis, Gentry, Pope, Peters, Savage
NAYS:	None
ABSTAIN:	None
ABSENT:	None

**VA13-00019: Giuseppe Leonardi, 305 Woodside Drive, LRSN 12000083,** a variance to reduce the required side yard setback for an accessory structure from 3' to 2.2' to allow an existing 20.3' x 28.6' shed to remain on an existing single-family parcel.

After all witnesses were sworn in by the court reporter, Sr. Zoning Official Jeff Conkle stated that the staff recommendation regarding the application to reduce the required side yard setback for an accessory structure from 3' to 2.2' to allow an existing 20.3' x 28.6' shed to remain on an existing single-family parcel is that it be denied due to the inability to meet the required criteria for a hardship as set forth in the Zoning Ordinance and the Code of Virginia.

The applicant, Mr. Leonardi, presented his case to the Board.

Mr. DeConcini of 300 Woodside Drive, and Mr. Dale of 304 Woodside Drive, spoke in favor of the variance.

After discussion, a motion was made by Board Member Gentry and seconded by Vice-Chairman Peters that a hardship exists and; the variance should be approved because:

1. The strict application of the ordinance would produce undue hardship relating to the property; and
2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

3. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
4. Granting of the variance is in harmony with the intended spirit of the ordinance.

A roll call vote on the motion resulted as follows:

AYES:	Ellis, Gentry, Pope, Peters, Savage
NAYS:	None
ABSTAIN:	None
ABSENT:	None

**VA13-00020: Floyd & Lois Chilcott, 5 Betz Lane, LRSN 5001408**, a variance to reduce the required dwelling size from 2000 square feet to 1500 square feet to allow a new 1500-square-foot single-family dwelling on a vacant single-family parcel.

After all witnesses were sworn in by the court reporter, Sr. Zoning Official Jeff Conkle stated that the staff recommendation regarding the application to reduce the required dwelling size from 2000 square feet to 1500 square feet to allow a new 1500-square-foot single-family dwelling on a vacant single-family parcel is that it be denied due to the inability to meet the required criteria for a hardship as set forth in the Zoning Ordinance and the Code of Virginia.

The applicant, Mr. Chilcott, presented the case to the Board.

After discussion, a motion was made by Board Member Pope and seconded by Board Member Ellis that a hardship exists due to the inability to build a 2000 square foot house on the lot due to the shape of the lot and, therefore, the variance should be approved because:

1. The strict application of the ordinance would produce undue hardship relating to the property; and
2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
3. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
4. Granting of the variance is in harmony with the intended spirit of the ordinance.

A roll call vote on the motion resulted as follows:

AYES:	Ellis, Gentry, Pope, Peters, Savage
NAYS:	None
ABSTAIN:	None

ABSENT: None

**VA13-00021: Lynne F. Wright, 2501 East Pembroke Avenue, LRSN 12006900**, a variance to reduce a required side yard setback from 15' to 9.8' and to reduce the required rear yard setback from 21' to 12' to allow an 11.4' x 13.2' one-story rear addition on an existing single-family dwelling.

After all witnesses were sworn in by the court reporter, Sr. Zoning Official Jeff Conkle stated that the staff recommendation regarding the application to reduce a required side yard setback from 15' to 9.8' and to reduce the required rear yard setback from 21' to 12' to allow an 11.4' x 13.2' one-story rear addition on an existing single-family dwelling is that it be denied due to the inability to meet the required criteria for a hardship as set forth in the Zoning Ordinance and the Code of Virginia.

Sr. Zoning Official Jeff Conkle informed the Board he received a request from the applicant, that their application be withdrawn.

After discussion, a motion was made by Board Member Pope and seconded by Vice-Chairman Peters that the request for withdrawal submitted by the applicant be approved.

A roll call vote on the motion resulted as follows:

AYES:	Ellis, Gentry, Pope, Peters, Savage
NAYS:	None
ABSTAIN:	None
ABSENT:	None

**SX13-00003: John W. Pane & Sheila Johnson-Pane Trust, 13 Ridge Lake Drive, LRSN 4000648**, a special exception to allow a day care 2 for up to 9 children at an existing single-family dwelling.

Sr. Zoning Official Jeff Conkle stated that staff is recommending the granting of the Special Exception subject to the attached ten (10) conditions.

The applicant, Mrs. Johnson - Pane, presented her case to the Board.

After discussion, a motion was made by Vice-Chairman Peters and seconded by Board Member Pope that the special exception should be approved with the following ten (10) conditions:

1. Outdoor play area(s) shall be limited to the rear yard and shall be enclosed with a fence at least four (4) feet in height
2. No signs shall be allowed
3. Records shall be kept on a daily basis of enrollment with the names, addresses and ages of children and be open for inspection by authorized personnel

4. Hours of operation shall be limited to 6:00 AM to 6:00 PM, Monday through Friday
5. Employees must reside on premises
6. The day care shall be licensed by the Virginia Department of Social Services
7. In each kitchen there shall be installed and maintained at least one approved type-ABC portable fire extinguisher with a minimum rating of 2A10BC
8. The facility shall provide and maintain at least one approved battery-operated properly-installed smoke detector as a minimum (i) outside each sleeping area in the vicinity of bedrooms and bedroom hallway and (ii) on each additional floor
9. The total number of children enrolled shall not exceed nine (9)
10. A certificate of occupancy must be obtained from the Community Development Department prior to beginning operation of the day care.

A roll call vote on the motion resulted as follows:

AYES:	Ellis, Gentry, Pope, Peters, Savage
NAYS:	None
ABSTAIN:	None
ABSENT:	None

There being no further business to come before the Board, the meeting was adjourned at 5:45 p.m.

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Thomas Savage, Chairman



# CITY OF HAMPTON· BOARD OF ZONING APPEALS

## STAFF EVALUATION

**Meeting Date**  
October 7, 2013

**Prepared By:** Jeff Conkle, Senior Zoning Official  
**Reviewed By:** Steve Shapiro, Zoning Administrator

728-5229  
727-6246

**Case Type:** Variance  
**Case Number:** VA13-00022  
**Owner:** Wendy's International, Inc.  
**Applicant:** Mike Perry, MSA, P.C.

**Location:** 5113 W. Mercury Blvd. (LRSN 3002550)  
**Zoning District(s):** C-2 Limited Commercial

### Request

Variance to increase the total number of allowable drive-through menu board signs from 1 to 2 and to increase the maximum overall height of a drive-through menu board sign from 6' to 6.25' to allow a second menu board sign at an existing restaurant

### Applicable Zoning Ordinance Section(s)

Ch. 18.1, Sec. 18.1-6(2) "Special situations" related to signs

*In the following special situations, signs may be provided in addition to other permitted signs and shall not be subject to the requirements of the Table of Basic Design Elements, except as described below:*

- (1) ...
- (2) *Menu boards. In addition to other permitted signs, businesses may have one (1) menu board, provided that the following provisions are met:*
  - (a) *The area of the menu board does not exceed sixteen (16) square feet when located in a front yard or a side yard and twenty-four (24) square feet when located in a rear yard.*
  - (b) *The maximum height is six (6) feet for a freestanding sign and is in accordance with the Table of Basic Design Elements for wall signs.*
- (3) ...

### Evaluation

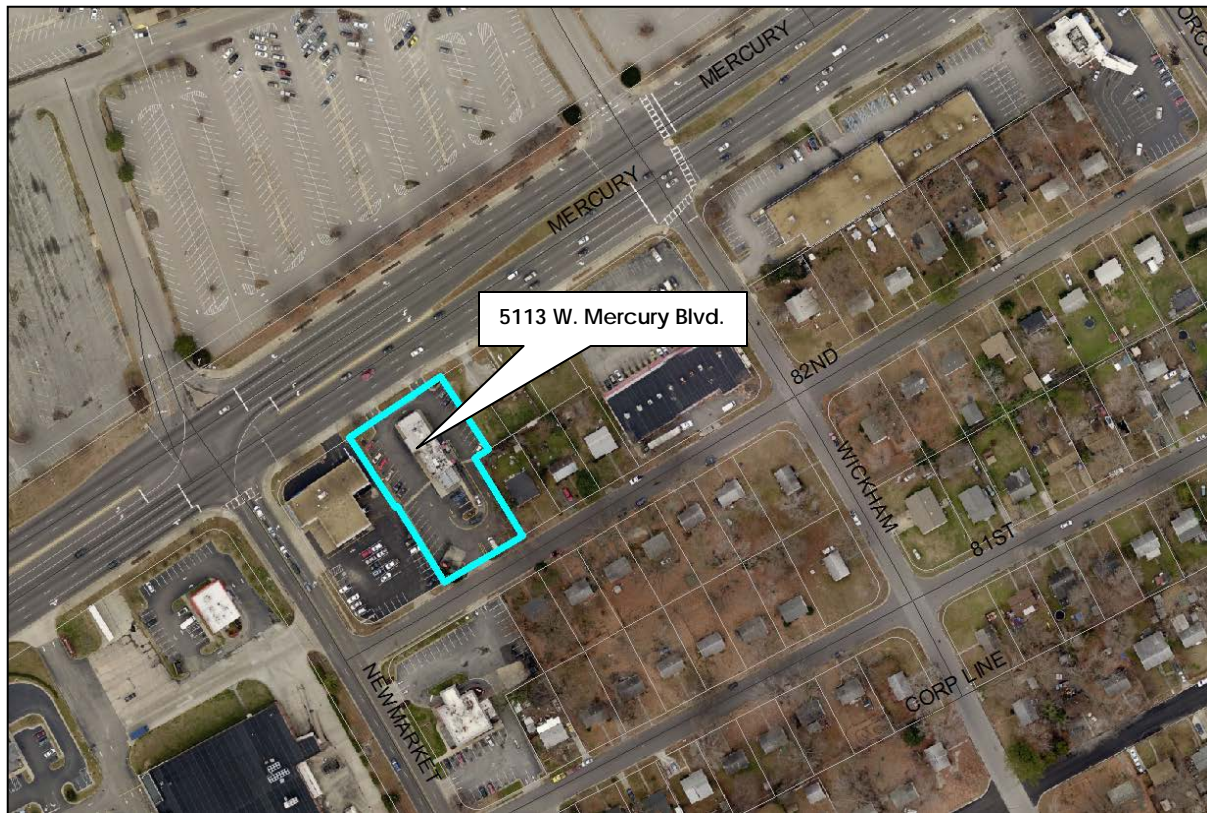
Staff has reviewed the application as it relates to the four criteria for approval set forth in Ch. 22 of the Zoning Ordinance and finds the following:

Criteria	Finding
1. The strict application of the ordinance would produce undue hardship relating to the property	Does not meet
2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity	Does not meet
3. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changes by the granting of the variance	Does not meet
4. Granting of the variance is in harmony with the intended spirit and purpose of the ordinance.	Does not meet

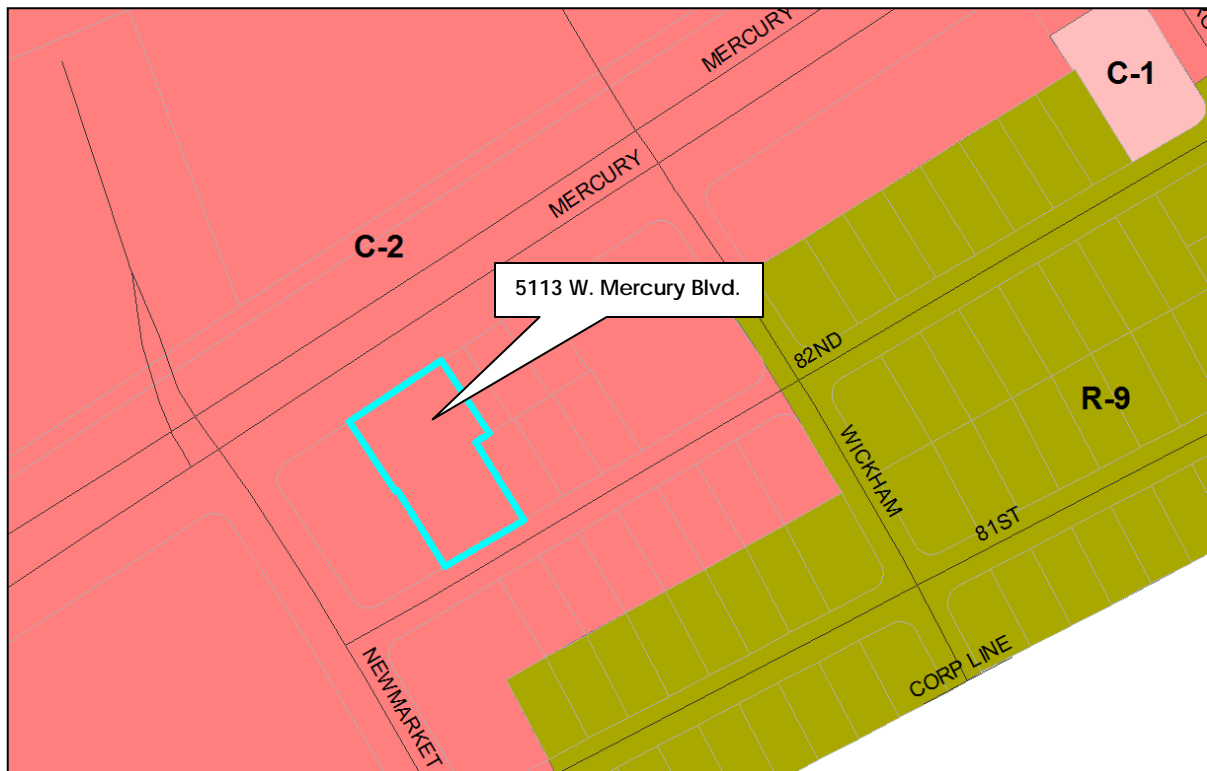
### Recommendation

Staff recommends denial of this application due to its inability to meet the criteria as stated.

Aerial Map



Zoning Map







# Application for Board of Zoning Appeals

Complete this application in its entirety and submit along with the required materials (listed in Step 2 below) to the following address:

City of Hampton  
Community Development Department  
22 Lincoln Street, 3rd Floor  
Hampton, Virginia 23669

OFFICE USE ONLY  
Date Received:

**RECEIVED**

SEP 06 2013

BY: [Signature]

VA  
13 - 00 022

Case Number: 13 - 00 022

Application for: ☒ variance ☐ special exception ☐ appeal of the zoning administrator's decision ☐ appeal of a zoning administrative officer's decision

## 1. PROPERTY INFORMATION

Address or Location 5113 W. Mercury Blvd

LRSN 3002550 Zoning District C-2, Limited Business

Current Land Use Commercial

Proposed Land Use Commercial

The proposed use will be at/in: ☐ an existing building ☐ a new addition ☒ a new building

## 2. SUBMITTAL REQUIREMENTS & DETAILS

All applications must include: (1) a recent survey plat of the property; (2) application fee of \$100 for single-family residential uses, \$250 for all other uses, payable to the City of Hampton; (3) a brief written description of request (use following space or submit as a separate document);

### Description of request:

1. Variance to increase the total number of allowable drive-thru menu board signs from 1 to 2 to allow a second menu board sign at an existing restaurant.

2. VARIANCE TO INCREASE OVERALL MAXIMUM HEIGHT OF A DRIVE-THRU MENU BOARD SIGN FROM 6' TO 6.25'

02 09/06/2013 11:31 048334 PUL  
VARIANCE \$250.00  
DORINDA

and (4) the following:

### Variance X

· For requests relating to signage, submit plans showing detail of the sign type, size, design, and location

### Special Exception

· Day Care Supplement form

### Appeal of the Zoning Administrator's Decision or Appeal of a Zoning Administrative Officer's Decision

· In the description of request, include the date of the decision being appealed and the reason for appeal

*Additional information may be required at the Zoning Administrator's discretion*

**3. PROPERTY OWNER INFORMATION**

An individual or a legal entity may be listed

Owner's Name Wendy's International, Inc.  
Address 1165 Sanctuary Pkwy #300  
1155 Perimeter Ctr W.  
City Atlanta State GA Zip 30009  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

**4. APPLICANT INFORMATION**  
(if different from owner)

Applicant's Name Wendy's International, Inc.  
Address 1165 Sanctuary Pkwy #300  
1155 Perimeter Ctr W.  
City Atlanta State GA Zip 30009  
Phone 770 283 3767  
Email bob.skinner@wendys.com

**4. AGGRIEVED PARTY INFORMATION (if applicable)**

An individual or a legal entity may be listed

Aggrieved Party \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

**5. APPLICANT AGENT INFORMATION**  
(if different from applicant)

Agent's Name MSA, P.C.  
Address 5033 Rouse Drive  
City Virginia Beach State VA Zip 23462  
Phone 757-490-9264  
Email mike.perry@msaonline.com

**6. CERTIFICATION FOR LEGAL ENTITY PROPERTY OWNERS**

Complete this section only if the property owner is not an individual but rather a legal entity such as a corporation, trust, LLC, partnership, diocese, etc. as specified in Step 3 above.

"I hereby submit that I am legally authorized to execute this application on behalf of the fee-simple owner of this property. I have read this application and it is submitted with my full knowledge and consent. I authorize city staff and representatives to have access to this property for inspection. The information contained in this application is accurate and correct to the best of my knowledge."

Name(s), title(s), signature(s), and date(s) of authorized representative(s) of entity (attach additional page if necessary):

Name of Legal Entity Wendy's International, Inc.

Signed by: Name (printed) Bob Skinner, Its (title) Construction Manager

Signature [Signature] Date 9-6-13

Name (printed) \_\_\_\_\_, Its (title) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**7. CERTIFICATION FOR INDIVIDUAL PROPERTY OWNERS**

Complete this section only if the property owner is an individual or individuals.

"I hereby submit that I am the fee-simple owner of this property. I have read this application and it is submitted with my full knowledge and consent. I authorize city staff and representatives to have access to this property for inspection. The information contained in this application is accurate and correct to the best of my knowledge."

Name(s), signature(s), and date(s) of owner(s) (attach additional page if necessary):

Signed by: Name (printed) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (printed) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

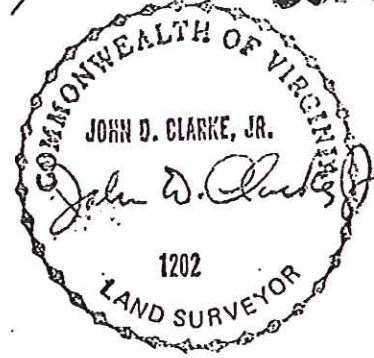




**BALDWIN AND GREGG, LTD.**

ENGINEERS • PLANNERS • SURVEYORS FOUNDED 1938

July 29, 1980  
File Number C-3650



LEGAL DESCRIPTION  
OF LOTS 7, 8, 12, 13 AND PART OF LOT 6  
BLOCK 2, NEWMARKET VILLAGE  
HAMPTON, VIRGINIA  
AS SHOWN ON A PLAT ENTITLED  
"PHYSICAL SURVEY OF LOTS 7, 8, 12, 13 AND PART OF LOT 6,  
BLOCK 2, NEWMARKET VILLAGE (PLAT BOOK 3, PAGE 127)  
HAMPTON, VIRGINIA, FOR WENDY'S INTERNATIONAL, INC.,  
JULY 23, 1980"

Beginning at an iron pipe at the southern right-of-way line of West Mercury Boulevard, said iron pipe being 124.97' east of the intersection of the eastern right-of-way line of Marshall Avenue with the southern right-of-way line of West Mercury Boulevard, said iron pipe also being the northeast corner of Lot 9 and the northwest corner of Lot 8, Block 2, as shown on a plat entitled "Newmarket Village", which is duly recorded in the Clerk's Office of the Circuit Court of Hampton, Virginia, in Plat Book 3 at page 127; thence along the southern right-of-way line of West Mercury Boulevard N58°00'30" E, 150.00' to an iron pin; thence along a line that is 30' east of and parallel with the division line between Lots 6 and 7, as shown on the aforementioned plat, S31°59'30" E, 115.34' to a pin; thence along a line dividing Lots 6 and 14 as shown on the aforementioned plat S59°24'37½" W, 26.91' to a pin, said pin being the northeast corner of Lot 13 and the northwest corner of Lot 14 as shown on the aforementioned plat; thence along the division line of Lots 13 and 14 S29°11'15" E, 121.02' to an iron pin on the northern right-of-way line of 82nd Street; thence along the northern right-of-way line of 82nd Street S60°48'45" W, 120.00' to an iron pin, said iron pin being the southwest corner of Lot 12 and the southeast corner of Lot 11 as shown on the aforementioned plat; thence along the division line between Lots 11 and 12 N29°11'15" W, 118.08' to an iron pin; thence S59°24'37½" W, 3.09' to an iron pipe, said iron pipe being the southwest corner of Lot 8 as shown on the aforementioned plat; thence along the division line between Lots 8, 9 and 10 N13°59'30" W, 111.51' to the point of beginning. The above described parcel contains 31,360 square feet or 0.720 acres.

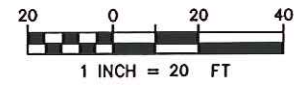
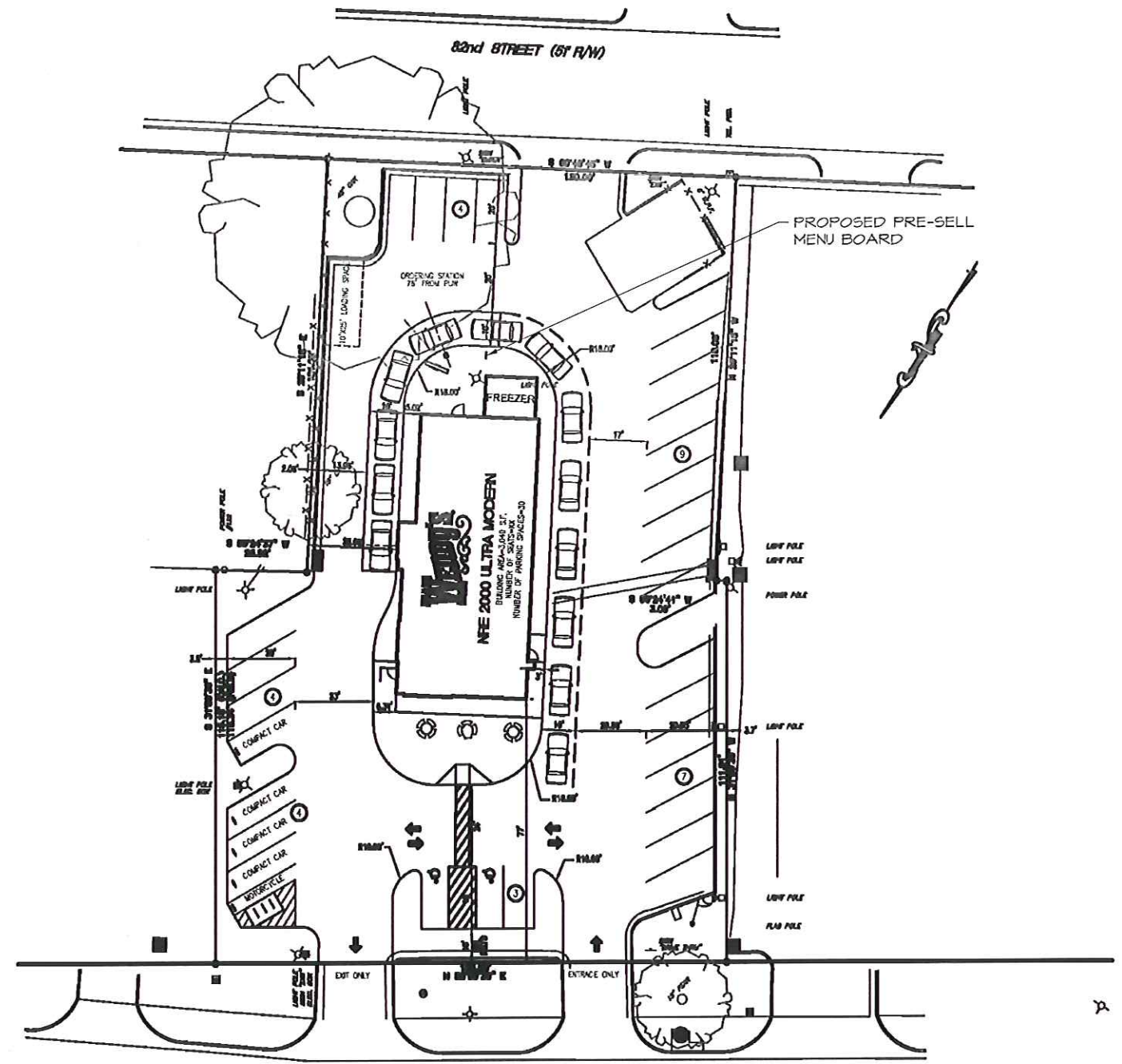
NORFOLK • VIRGINIA BEACH • ALEXANDRIA, VIRGINIA

620 MAY AVENUE, NORFOLK, VIRGINIA 23504 • P.O. BOX 5725 NORFOLK, VIRGINIA 23516 • TELEPHONE (804) 623-7300

PRE-SELL MENU BOARD LOCATION PLAN OF

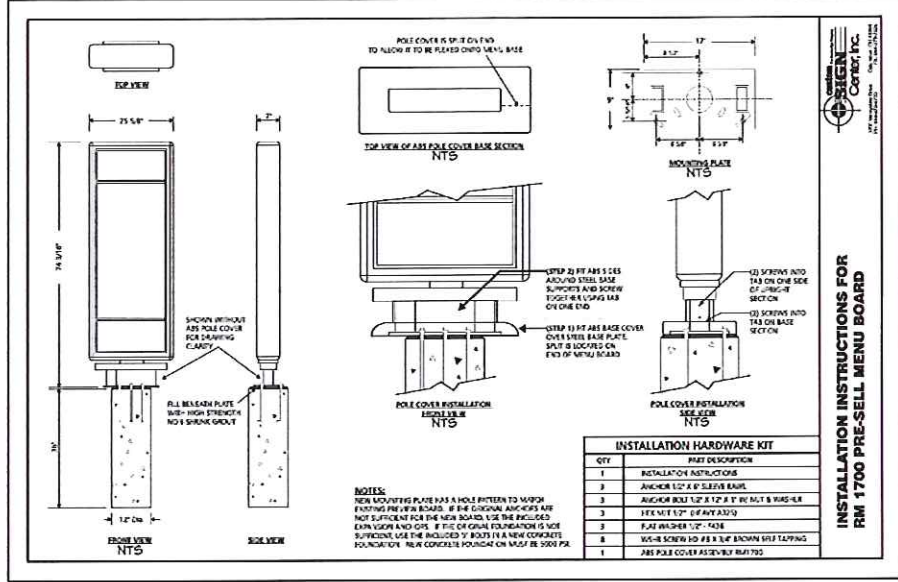
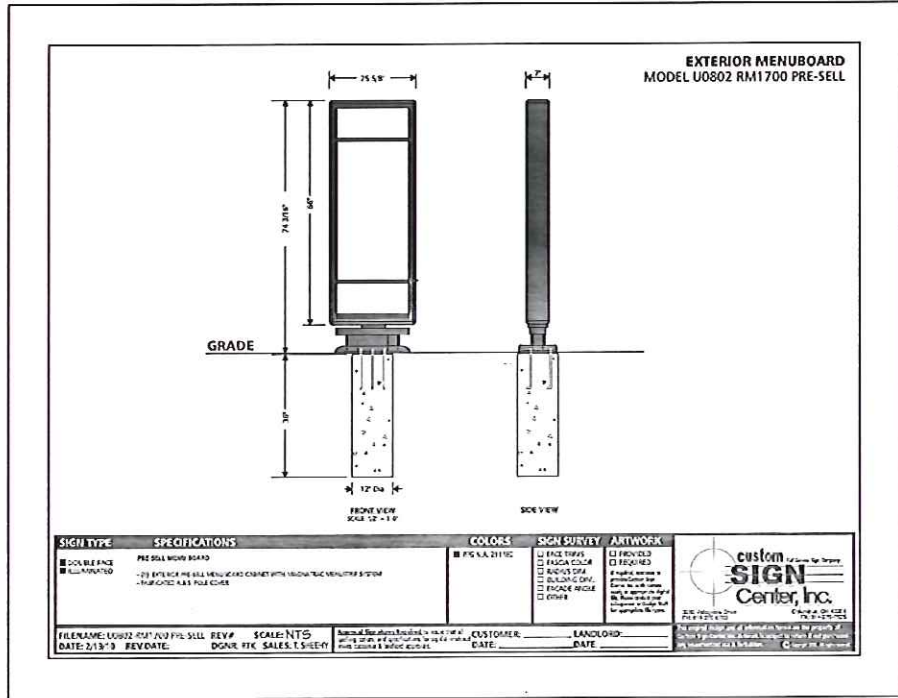
WENDY'S

5113 W. MERCURY BLVD.  
HAMPTON, VIRGINIA



DATE: 09/06/13  
EXHIBIT FOR BZA

THIS DRAWING IS CONCEPTUAL AND HAS BEEN PREPARED WITHOUT BENEFIT OF A SITE SURVEY, THEREFORE, PROPERTY LINES, WETLAND BOUNDARIES, AND OTHER SITE SPECIFIC DATA ARE APPROXIMATE. CONCEPT DRAWINGS ARE GENERAL IN NATURE AND ARE INTENDED ONLY TO ILLUSTRATE THE DEVELOPMENT POTENTIAL FOR A PROPERTY; THEY SHOULD NOT BE RELIED UPON AS THE SOLE BASIS FOR ANY FINANCIAL OR LEGALLY BINDING TRANSACTION.



**MSA, P.C.**

Environmental Sciences • Planning • Surveying  
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